REMARKS

Claims 1 through 8 are pending in this application, of which claim 2 has been indicated to contain allowable subject matter. Accordingly, the only substantive issue pivots about the patentability of claims 1 and 3 through 8.

Claims 1 and 3 through 8 were rejected under 35 U.S.C. §102 for lack of novelty as evidenced by Sorin et al.

In the statement of the rejection, the Examiner referred to 15 Figures and presumably the entire patent, asserting the disclosure of a gain equalizer corresponding to that claimed. This rejection is traversed.

The factual determination of lack of novelty under 35 U.S.C. §102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc. 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003); Crown Operations International Ltd. v. Solutia Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002).* In imposing a rejection under 35 U.S.C. §102 the Examiner is required to specifically identify wherein an applied reference is perceived to identically disclose each and every feature of a claimed invention. *In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).* That burden has not been discharged. Moreover, there are substantial differences between the claimed invention and the system disclosed by Sorin et al. that scotch the factual determination that Sorin et al. disclose a gain equalizer identically corresponding to that claimed.

Specifically, Sorin et al. do not even disclose or suggest gain equalization. Sorin et al. are directed to an "Add/Drop Module used in a WDM transmission. This is a far from the claimed gain equalizer.

Applicants would note that all of the gratings disclosed by Sorin et al. are Fiber Bragg Gratings (FBG) of reflection type with a high reflectance. On the other hand, in accordance with the claimed invention, a coarse-tunable equalizing section has a transmission loss greater than that of the fine-tunable equalizing section, and has a reflectance lower than that of the fine-tunable equalizing section. In other words, the module disclosed by Sorin et al. employing FBGs, each of which is a reflection type, can not realize gain equalization as in the claimed invention.

And there are other differences as well. Indeed, the basic configuration disclosed by Sorin et al., as apparent from column 6, lines 36 through 39, is constituted by FBGs reflecting different wavelength components different from each other. On the other hand, in accordance with the claimed invention, the coarse equalizing section and the fine equalizing section operate in the same wavelength band, which is a completely different technique from that disclosed by Sorin et al.

Sorin et al. disclose an example of another configuration in which a tracking FBG and a standard filtering FBG are provided, noting column 4, lines 29 through 44, and in column 8, lines 44 through 60. The standard FBG is a narrow band FBG employed for an Add/Drop in WDM transmission (column 2, lines 59 et. seq.), and the tracking FBG has characteristics for employing a narrower band than that in the standard FBG (column 4, lines 29 through 44, and column 8, lines 44 through 60). **None of these compensates for the wavelength dependency**

of an optical amplifying apparatus. Clearly, Sorin et al. neither disclose nor suggest grain equalization or gain flattening.

Furthermore, Sorin et al. neither disclose nor suggest the use of a long-period grating, slanted grating, dielectric multi-layer, etalon filter, and chirped grating. In the respect Applicants separately argue the patentability of each and every claim.

In addition to the above argued differences between the claimed invention and the system disclosed by Sorin et al., Applicants would note that the Examiner misinterpreted the teachings of Sorin et al. The Examiner referred to "....Bragg grating sections 30, 32, 34, 36, 38 and 40". This interpretation by the Examiner is clearly technological erroneous, because "a long period Bragg grating" is nonexistent. The term "long-period grating" and "Bragg grating" are clearly different, because the "Bragg grating" would have been recognized by one having ordinary skill in the art as a "short-period grating".

The above argued **differences** between each of the claimed inventions and the system disclosed by Sorin et al. undermine the factual determination that Sorin et al. disclose a gain equalizer identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc., 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986).* Applicants, therefore, submit that the imposed rejection of claims 1 and 3 through 8 under 35 U.S.C. §102 for lack of novelty as evidenced by Sorin et al. is not factually viable and, hence, solicit withdrawal thereof.

Applicants acknowledge, with appreciation, the Examiner's indication that claim 2 contains allowable subject matter. Based upon the foregoing, it should be apparent that the

imposed rejection has been overcome and that all pending claims are in condition for allowance. Favorable consideration is, therefore, solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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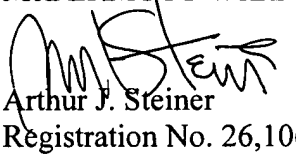

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